

J137-4230

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

E. Mishan & Sons, Inc.
and BHH LLC,

Plaintiffs,

v.

RSA Group, LLC,
d/b/a As Seen On TV Pros,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/19/2020

Civil Action No. 1:20-cv-7523-VM

FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION ORDER

DEFINITIONS

I. Plaintiffs' Registered Trademarks:

Mark	Reg. No.	International Class/Goods
PAW PERFECT	5,836,200	IC 008: battery-powered pet grooming products, namely, pet nail filers, pet nail trimmers and pet nail grinders
CAR CANE	4,897,344	IC 012: non-mechanized hand-held device for insertion into striker pin opening of vehicle to help a person getting in or out of vehicle
BELL+HOWELL	5,669,096	IC 009: sunglasses, video camcorders, tripods, headphones, in-ear headphones, image projectors, sound amplifiers, battery chargers, solar-powered battery chargers; camera lenses; telescopic lens sights; lenses for mobile phone cameras; zoom lens for smartphone cameras IC 011: flashlights, LED flashlights; LED landscape lights, laser light projectors, landscape lighting installations in the nature of landscape laser light projectors for displaying colors,

		<p>decorative images and patterns via discs bearing images; lighting fixtures shaped as discs; solar-powered all-weather lights; solar cell lighting apparatus, namely, outdoor solar cell powered lighting units and fixtures; reading lights; spot lights for household illumination; lanterns for lighting and electric lanterns; electric and battery-operated night lights; light bulbs, LED lighting fixtures in the nature of light bars for outdoor and indoor uses; flexible lights, namely, lights mounted on flexible shafts for use as reading lights and work lights; LED light bulbs, portable battery-operated utility lights for indoor and outdoor use; humidifiers</p> <p>IC 021: ultrasonic pest repellents, devices for pest and vermin control, namely, electromagnetic pest repellents</p>
BELL&HOWELL	5,631,839	<p>IC 009: sunglasses, video camcorders, tripods, headphones, in-ear headphones, image projectors, sound amplifiers, battery chargers, solar-powered battery chargers; camera lenses; telescopic lens sights; lenses for mobile phone cameras; zoom lens for smartphone cameras</p> <p>IC 011: flashlights, LED flashlights; LED landscape lights, laser light projectors, landscape lighting installations in the nature of landscape laser light projectors for displaying colors, decorative images and patterns via discs bearing images; lighting fixtures shaped as discs; solar-powered all-weather lights; solar cell lighting apparatus, namely, outdoor solar cell powered lighting units and fixtures; reading lights; spot lights for household illumination; lanterns for lighting and electric lanterns; electric and battery-operated night lights; LED lighting fixtures in the nature of light bars for outdoor and indoor uses; flexible lights, namely, lights mounted on flexible shafts for use as reading lights and work lights; LED light bulbs, portable battery-operated utility lights for indoor and outdoor use; humidifiers</p> <p>IC 021: ultrasonic pest repellents, devices for pest and vermin control, namely, electromagnetic pest repellents</p>
EMSON	5,516,574	IC 011: humidifiers; electric hair dryers; flashlights;

		battery-operated lights, namely, portable utility lights, night lights, pocket search lights and lights that can be placed on surfaces where other light sources are unavailable; electric grills; electric countertop convection ovens and combined halogen, infrared and convection ovens; oil-free electric fryers; electric lighting fixtures for use in the garden; solar-powered lights; laser light projectors, namely, stand-alone light projection fixtures for decorative residential usage, excluding industrial or commercial uses; lanterns for lighting IC 017: watering, lawn and garden hoses
BELL+HOWELL DISK LIGHTS	5,615,759	IC 011: LED landscape lights; solar-powered all-weather lights; solar light fixtures, namely, outdoor solar powered lighting units and fixtures; outdoor lighting, namely, landscape and walkway lighting fixtures
BELL+HOWELL	4,621,979	IC 009: anti-intrusion alarms, headphones, sound amplifiers; Audio speakers, battery chargers, ear buds, intercoms, electric door bells
BETTERBRELLA	5,261,179	IC 018: umbrellas

II. Plaintiffs' Common Law Trademarks:

Mark	Goods
TACLIGHT	flashlights ;lanterns
TACLIGHT PRO	flashlights
NUTRI CHOPPER	handheld kitchen slicer
TACGLASSES	sunglasses
FLIP-UP TACGLASSES	sunglasses
TACAMPLIFIER	sound amplifiers

III. Plaintiffs' Trade Dress:

PAW PERFECT (Product) Trade Dress; and

CAR CANE (Product) Trade Dress

IV. Plaintiffs' Registered Copyrights:

Copyright Reg. No.	Description
VA 2-147-555	PAW PERFECT Packaging
PA 2-082-400	TACLIGHT Lantern Infomercial
VA 2-096-773	DISK LIGHTS Packaging
PA 2-082-398	TACGLASSES Infomercial
PAu 3-922-987	FLIP-UP TACGLASSES Infomercial

This matter comes before the Court by motion filed by Plaintiffs for the entry of final judgment and permanent injunction by default against Defendant for Defendant's trademark infringement, trademark counterfeiting, false designations of origin, false or misleading representation of fact, copyright infringement, trade dress infringement, unfair competition, passing off, and false advertising arising out of Defendant's unauthorized use of Plaintiffs' registered and unregistered trademarks, trade dress, and copyrights in Defendant's advertising, marketing, promoting, distributing, displaying or offering for sale and/or selling and/or sale of infringing and counterfeit products.

The Court, having considered the Complaint, Plaintiffs' Memorandum of Law, the Bucci Declaration in Support of Plaintiffs' Application for Default Judgment, the Ayooob Declaration in Support of Plaintiffs' Application for Default Judgment, the Corsello Declaration in Support of Plaintiffs' Application for Default Judgment, the Falto Declaration in Support of Plaintiffs' Application for Default Judgment, the Zaccaria Declaration in Support of Plaintiffs' Application for Default Judgment, the Certificate of the Clerk of the Court stating that no answer has been filed in this action by Defendant and Plaintiffs' Final Default Judgment, is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. Defendant's Liability

Judgment as to liability is granted to Plaintiffs as to all claims properly pleaded against Defendant in the Complaint (Dkt. # 2).

II. Defendant's Infringement Was Willful

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant has willfully infringed **Plaintiffs' Registered Trademarks, Plaintiffs' Common Law Trademarks** and **Plaintiffs' Trade Dress** under 15 U.S.C. § 1125(a) and 1114 as applicable; and that Defendant has willfully infringed Plaintiff Emson's U.S. Copyright Registration Nos. VA 2-147-555, PA 2-082-400, VA 2-096-773, PA 2-082-398, and PA 3-922-987.

III. Permanent Injunction

A. Trademarks and Trade Dress

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant, its officers, agents, servants, employees, successors and assigns and all persons acting in concert privity or participation with Defendant, who receive actual notice of this Order are permanently enjoined and restrained from:

(a) importing, selling, offering for sale, distributing and/or distributing the products accused of infringing **Plaintiffs' Registered Trademarks, Plaintiffs' Common Law Trademarks** and **Plaintiffs' Trade Dress** ("the Asserted Trademarks and Trade Dress"), and any products that are not colorably different from those products, and from directly or indirectly infringing the Asserted Trademarks and Trade Dress,

(b) using any other false designation of origin or false description or representation

or any other thing calculated or likely to cause confusion or mistake in the mind of the trade or public or to deceive the trade or public into believing that Defendant's products or activities are in any way sponsored, licensed, or authorized by or affiliated with or in connection with Plaintiffs,

(c) passing off, inducing or enabling others to sell or pass off any products as products of Plaintiffs which products are not made or sold by Plaintiffs, or belonging to Plaintiffs, or under the control, supervision or approval of Plaintiffs, or for sale under the Asserted Trademarks and Trade Dress, or any other mark or trade dress which so resembles the Asserted Trademarks and Trade Dress so as to be likely to cause confusion, deception or mistake, and

(d) transporting, moving, returning, or otherwise disposing of, in any manner, any counterfeit products or any other products confusingly similar to Plaintiffs' products, or that otherwise bear, contain, display or utilize any of the Asserted Trademarks and Trade Dress, any derivation or colorable imitation thereof or likely to detract from the Asserted Trademarks and Trade Dress

(e) that all infringing articles, packages, printed materials, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed, pursuant to 15 U.S.C. § 1118.

B. Copyrights

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant, its officers, agents, servants, employees, successors and assigns and all persons acting in concert privity or participation with Defendant, who receive actual notice of this Order are permanently enjoined and restrained from:

- (a) importing, selling, offering for sale, distributing and/or distributing the products accused of infringing Plaintiff Emson's U.S. Copyright Registration Nos. VA 2-147-555, PA 2-082-400, VA 2-096-773, PA 2-082-398, and PA 3-922-987 (the "Asserted Copyrights") and any products that are not colorably different from those products,
- (b) from directly or indirectly infringing the Asserted Copyrights, and
- (c) from using any artwork, photographs, or other materials of Plaintiffs;
- (d) that all infringing material be impounded and destroyed, pursuant to 17 U.S.C. § 503; and
- (e) that Defendant has willfully infringed the Asserted Copyrights pursuant to 17 U.S.C. § 504.

C. False Advertising and Unfair Competition

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant, its officers, agents, servants, employees, successors and assigns and all persons acting in concert privity or participation with Defendant, who receive actual notice of this Order are permanently enjoined and restrained from:

- (a) utilizing the "As Seen On TV" logo or any variations thereof including the "As Seen On TV Pros" name and Logo, in any way in connection with any product not substantially advertised on television, on the packaging or in commercial advertising or marketing therefor;
- (b) using false advertisements of any kind in connection with the advertisement of Defendant's products; or
- (c) otherwise competing unfairly with Plaintiffs in any manner.

D. False Advertising and Unfair Competition Order

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendant, its officers, agents, servants, employees, successors and assigns and all persons acting in concert privity or participation with Defendant, who receive actual notice of this Order are hereby ordered and directed to:

(a) remove all instances of the “As Seen On TV” logo or any variations thereof including the “As Seen On TV Pros” Logo or any variations thereof, and any statements falsely suggesting that Defendant’s products are “As Seen On TV” products; and

(b) file with the Court and serve upon Plaintiffs’ counsel within thirty (30) days after entry of judgment a report setting forth in detail the manner and form in which the Defendant has complied with the requirements of the injunction and order.

IV. Damages Awards

A. Statutory Damages – Counterfeiting Registered Trademarks

For the use of a counterfeit mark, the Court may award statutory damages in the amount of: (1) “not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just,” or (2) if the use of the counterfeit mark is found to be willful, up to “\$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C. § 1117(c).

In view of Defendant’s willful infringement of their registered trademarks, Plaintiffs are awarded \$25,000/product advertised in connection with a counterfeit registered mark as follows:

Reg. No.	Product(s)	Amount
PAW PERFECT 5,836,200	PAW PERFECT® Pet Nail Groomers	\$25,000
CAR CANE 4,897,344	CAR CANE® Automotive Assistance Device	\$25,000
BELL+HOWELL 5,669,096	BELL+HOWELL® TACLIGHT™ Flashlights; BELL+HOWELL® TACLIGHT PRO Flashlights; BELL+HOWELL® TACGLASSES Sunglasses; BELL+HOWELL® TACAMPLIFIER Sound Amplifiers	\$100,000
EMSON 5,516,574	EMSON® TACLIGHT™ Lanterns	\$25,000
BELL+HOWELL DISK LIGHTS 5,615,759	BELL+HOWELL DISK LIGHTS® Solar Powered Exterior Lighting	\$25,000
BETTERBRELLA 5,261,179	BETTERBRELLA® Umbrellas	\$25,000
Total Statutory Damages Attributable to Trademark Counterfeiting		\$225,000

B. Statutory Damages – Infringement of Registered Copyrights

For the infringement of a registered work, the Court may award statutory damages in the amount of: (1) an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable in a sum of not less than \$750 or more than \$30,000 as the court considers just or (2) if the Court finds, that infringement was committed willfully, the Court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. 17 U.S.C. § 504(c)(1-2).

In view of Defendant's willful infringement of Plaintiffs' registered copyrights,

Plaintiffs are awarded \$25,000 for each registered copyright infringed as follows:

Copyright Reg. No.	Description	Amount
VA 2-147-555	PAW PERFECT Packaging	\$25,000
PA 2-082-400	TACLIGHT Lantern Infomercial	\$25,000
VA 2-096-773	DISK LIGHTS Packaging	\$25,000
PA 2-082-398	TACGLASSES Infomercial	\$25,000
PAu 3-922-987	FLIP-UP TACGLASSES Infomercial	\$25,000
Total Statutory Damages Attributable to Copyright Infringement		\$125,000

C. Total Damages Award

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that because it would serve both the compensatory and punitive purposes of the Lanham Act's and Copyright Act's prohibitions on willful infringement, and because Plaintiffs have sufficiently set forth the basis for the statutory damages award requested in their Memorandum of Law in Support of its Motion for Default Judgment, the Court finds such an award to be reasonable and Plaintiffs are awarded statutory damages against Defendant pursuant to Section 15 U.S.C. § 1117(c) of the Lanham Act and Sections 17 U.S.C. § 504(c)(1-2) of the Copyright Act as follows, plus post-judgment interest, as follows:

Statutory Damages for Trademark Counterfeiting - 15 U.S.C. § 1117(c)	\$225,000
Statutory Damages for Copyright Infringement - 17 U.S.C. § 504(c)(1-2)	\$125,000
Total Damages Award	\$350,000

V. Attorneys' Fees and Costs

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that because it would serve the compensatory and punitive purposes of the Lanham Act's and Copyright Act's prohibitions on willful infringement, and because Plaintiffs have sufficiently set forth the basis for an award of their reasonable attorneys' fees and costs as requested in their

Memorandum of Law in Support of their Application for Default Judgment, the Court finds such an award to be reasonable and Plaintiffs are awarded their reasonable attorneys' fees of \$32,511.90 and costs of \$3,329.08 against Defendant pursuant to 15 U.S.C. § 1117(a) and 17 U.S.C. § 505.

VI. Further Relief

A. Any failure by Defaulting Defendants to comply with the terms of this Order shall be deemed contempt of Court, subjecting Defendant to contempt remedies to be determined by the Court, including fines and seizure of property; and

B. This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Order.

Plaintiffs are directed to serve this judgment on Defendant.

